

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
SAN FRANCISCO, CALIFORNIA**

In the Matter of:)	
)	R9-2001-08
Wildflower Energy LP)	
)	Administrative Order on Consent
Indigo Energy Facility)	42 U.S.C. §7413(a)(1), (4)
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I. Findings of Fact:

WHEREAS, on January 17, 2001, Governor Davis of the State of California proclaimed a State of Emergency due to the shortage of electricity in California and on February 8, 2001, issued Executive Orders (the “Executive Orders”), directing the California regulatory authorities to implement numerous actions designed to increase the generation of electricity in California;

WHEREAS, Executive Order D-28-01 signed on March 8, 2001, directed the California Energy Commission (“CEC”) to expedite the processing of applications for power plants that can be on line by September 30, 2001;

WHEREAS, Wildflower Energy LP (“Wildflower”) filed an emergency application for certification with the California Energy Commission on March 8, 2001, for the Indigo Energy Facility, a 135 MW simple cycle natural gas power plant consisting of three GE LM6000 gas turbine engines to be located on 19th Avenue west of North Indian Avenue in the City of Palm Springs, Riverside County (“Indigo Energy Facility”);

WHEREAS, in March 2001, Wildflower filed an application for a New Source Review (“NSR”) Authority To Construct Permit (“ATC”) from the South Coast Air Quality Management District (“SCAQMD”) to allow the construction and operation of the Indigo Energy Facility;

WHEREAS, on March 28, 2001, the SCAQMD issued a notice of intent to issue an ATC for the Indigo Energy Facility, which initiates a 30-day public comment period;

WHEREAS, the proposed ATC requires the Indigo Energy Facility to install and operate a Selective Catalytic Reduction (“SCR”) pollution control system to limit its emissions of oxides of nitrogen (“NOX”) to a concentration of 5 ppm or lower;

WHEREAS, on April 4, 2001, the CEC certified the Indigo Energy Facility;

WHEREAS, Wildflower has indicated that the CEC’s certification included conditions for the Indigo Energy Facility to be on line by the target date of July 5, 2001, and Wildflower has represented that it must begin actual construction on the Indigo Energy Facility immediately in order to meet the date of July 5, 2001;

WHEREAS, the Clean Air Act, 42 U.S.C. § 7401 et seq. (the “Act”), as implemented through 40 C.F.R. §§ 51.160 - 51.165, require that the SCAQMD State Implementation Plan (“SIP”), contain regulations applicable to the construction and modification of “major stationary sources,” including the prohibition that a “major stationary source” may not begin actual construction without first obtaining a permit to construct;

WHEREAS, the SIP requires that no person may “build, erect, install, alter or replace any equipment, the use of which may cause the issuance of air contaminants or the use of which may eliminate, reduce or control the issuance of air contaminants without first obtaining written authorization [an ATC] for such construction from the Executive Officer” (SCAQMD Rule 201), and that the ATC include requirements for LAER/CA-BACT and offsets (SCAQMD Rule 1302);

WHEREAS, the Indigo Energy Facility is subject to the federal and state NSR

permitting provisions discussed above;

WHEREAS, the SCAQMD will not be able to issue a final ATC that fully complies with the NSR provisions of the SIP to Wildflower until after April 28, 2001;

WHEREAS, California has indicated that construction of the Indigo Energy Facility will help reduce blackouts and other adverse consequences of the energy supply emergency in the state, as demonstrated in the CEC decision to certify the Indigo Energy Facility;

WHEREAS, the Indigo Energy Facility is not allowed to commence operation under this Order so that the Facility will not emit any pollutants prior to receiving a final ATC;

WHEREAS, the United States Environmental Protection Agency, Region 9 (“EPA”) California Air Resources Board (“CARB”), and Wildflower (collectively designated as the “Parties”) agree that in order to alleviate the current energy generation shortage and to avoid potential blackouts in California, this Order is in the public interest; and

WHEREAS, Wildflower represents that its purpose in entering into this Order and beginning actual construction of the Indigo Energy Facility before receiving a final ATC is to assist the State of California in meeting the Governor’s objective to provide additional electricity for California by the target date of July 5, 2001.

NOW, THEREFORE, the Parties agree that:

II. Definitions

Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Act, and the regulations promulgated thereunder,

and in the SIP. In addition, the following definitions shall apply to the terms contained within this Order:

1. “LAER/CA-BACT” shall mean the Lowest Achievable Emission Rate, as defined by Section 173 of the Act, and regulations located at 40 C.F.R.

§51.165(a)(1)(xiii), and California BACT as defined in SCAQMD Rule 1302.

2. “Day” or “day” shall mean a calendar day;

3. “Effective Date” shall mean the last date this Order was signed by the Parties;

4. “Effective Period” shall mean the period starting the Effective Date and ending the Termination Date;

5. “Wildflower” shall mean Wildflower Energy LP and its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such;

6. “Order” shall mean this Administrative Order on Consent.

III. Conclusions of Law:

1. Authority to Issue Order

EPA has the authority to enter into this Order pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413. Section 113(a)(1), (4) grants the Administrator of EPA the authority to make findings of violation and to issue orders requiring persons in violation of the Act to come into compliance. This authority has been delegated to the Regional Administrator, EPA, Region 9 and redelegated to the Director, Air Division, EPA, Region 9.

By entering into this Order, the Parties agree that EPA is providing adequate notice of EPA’s allegation that Wildflower will be in violation of the SIP if it begins actual construction of the Indigo Energy Facility before Wildflower receives a final ATC.

Wildflower has not admitted that it is in violation of any requirement of the Act or SIP.

2. Applicability and Binding Effect

This Order shall apply to and be binding upon the EPA, CARB and Wildflower, its successors and assigns, and its officers, directors, employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in FRC P. 65(d).

During the Effective Period of this Order, Wildflower shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of ownership of any portion of the Indigo Energy Facility, any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Indigo Energy Facility. Wildflower shall condition any transfer, in whole or in part, of ownership, operation, or other interest of the Indigo Energy Facility upon acceptance by the transferee of the terms and conditions of this Order. Simultaneously with such notice, Wildflower shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Wildflower shall not be released from the obligations or liabilities of this Order unless EPA has approved the release of said obligations or liabilities.

IV. Order To Comply:

Pursuant to Section 113(a)(1), (4) of the Act, 42 U.S.C. §7413(a)(1), (4), the Director of the Air Division, Region 9, hereby issues this Order requiring Wildflower to comply with the following terms and conditions while this Order is in effect:

1. Any construction of the Indigo Energy Facility undertaken during the Effective Period of this Order shall be consistent with the draft ATC prepared by the SCAQMD

and noticed for public comment on March 28, 2001, including but not limited to installation of SCR to satisfy a NOX concentration limit of 5 ppm or lower as LAER/CA-BACT;

2. The LAER/CA-BACT analysis for the Indigo Energy Facility by the regulatory agencies shall be conducted as it would be for any proposed project and shall not be prejudiced by the fact that Wildflower will have begun construction of the Indigo Energy Facility pursuant to this Order;

3. Prior to issuance of the final ATC by the SCAQMD, Wildflower shall obtain all required emissions offsets;

4. Wildflower shall notify EPA and CARB within five business days of its receipt of a final ATC for the Indigo Energy Facility from the SCAQMD.

5. Wildflower shall not commence operation of the Indigo Energy Facility prior to issuance of the final ATC.

V. General Provisions:

1. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by the Parties.

2. Each undersigned representatives of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute this document.

3. Unless this Order states otherwise, whenever, under the terms of this Order, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change of address to

the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

4. The following addresses shall be used for notices and submissions required by this Order:

As to EPA:

Director, Air Division
U. S. E. P. A.
75 Hawthorne Street (AIR-1)
San Francisco, California 94105

As to Wildflower:

John D. Jones, Vice President
Wildflower Energy LP
909 Fannin, Ste. 2222
Houston, Texas 77010

As to CARB:

Kathleen Walsh, General Counsel
Air Resources Board, Office of Legal Affairs
P.O. Box 2815
Sacramento, California 95812

VI. Copies of Order:

This Order has been issued to John D. Jones, Vice President, Wildflower Energy LP. Copies of this Order have also been sent to Michael Carroll, Counsel for Wildflower, Barbara Baird, District Counsel, SCAQMD, and to Kathleen Walsh, Counsel for the California Air Resources Board.

VII. Effect of Order:

The entry of this Order shall not constitute an admission by Wildflower of any violation alleged herein nor of any statute or rule.

VIII. Effective Date and Termination of this Order:

The Termination Date of this Order shall be: (1) issuance of a final ATC to Wildflower for the Indigo Energy Facility and expiration of any applicable administrative appeal period; (2) failure of Wildflower to comply with any term or condition of its application for an ATC and the SCAQMD's draft ATC; or (3) failure to comply with any

term of this Order, whichever is earlier. In no event shall the Termination Date be later than four months from the Effective Date of this Order.

Notwithstanding the paragraph above, this Order shall terminate, after notice by EPA, if an imminent and substantial endangerment to the public health, welfare or the environment occurs. This Order shall terminate immediately upon receipt by Wildflower of the notice of termination.

IX. Enforcement:

Any violation of this Order may result in a civil judicial action for an injunction and civil penalties up to \$27,500 per day per violation, 42 U.S.C. §7413(b)(2). EPA may also file an action seeking criminal sanctions pursuant to Section 113(c) of the Act. 42 U.S.C. §7413(c).

X. Opportunity for Conference and Effective Date:

Section 113(a)(4) provides that this Order shall not take effect until Wildflower has had an opportunity to confer with EPA regarding the alleged violations.

Wildflower's signature in the space provided below shall constitute its acknowledgment that it has had sufficient opportunity to confer with EPA prior to issuance of the Order.

Wildflower's signature also constitutes its agreement to comply with Section IV above.

The undersigned representatives of EPA and Wildflower each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the respective Parties to this Order.

DATE:

U.S.E.P.A.

April 10, 2001

_____/s/_____
Jack Broadbent, Director
Air Division, Region 9

Acknowledged and Agreed:

DATE:

WILDFLOWER ENERGY LP

_____/s/_____
By: John D. Jones, Vice President

DATE:

CALIFORNIA AIR RESOURCES BOARD

_____/s/_____
Mike Kenny, Executive Officer